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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No.150825777-5777-01]

RIN 0694-AG70

Amendment to the Export Administration Regulations to Add XBS Epoxy System to the List of 0Y521 Series; Technical Amendment to Update Other 0Y521 Items

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: In this interim final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to make certain items subject to the EAR and to impose on those items a license requirement for export and reexport to all destinations, except Canada. Specifically, this rule classifies the specified XBS Epoxy System under Export Control Classification Number (ECCN) 0C521 on the Commerce Control List (CCL). As described in the final rule that established the 0Y521 series and that was published in the *Federal Register* on April 13, 2012, items are added to the 0Y521 series upon a determination by the Department of Commerce, with the concurrence of the Departments of Defense and State, that the items should be controlled for export because the items provide at least a significant military or intelligence advantage to the United States or foreign policy reasons justify control. The items identified in this rule are controlled for regional stability (RS) Column 1 reasons. The only license exception available for these items is for exports, reexports, and transfers

(in-country) made by or consigned to a department or agency of the U.S. Government. In this rule, BIS also removes technology and software related to aircraft wing folding systems.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments requested on the addition of the 0C521 item only.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The identification number for this rulemaking is BIS–2015–0043.
- By email directly to: *publiccomments@bis.doc.gov*. Include RIN 0694–AG70 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694–AG70.

FOR FURTHER INFORMATION CONTACT: Michael Rithmire, Electronics and Materials Division, Office of National Security and Technology Transfer Controls by phone at (202) 482-6105 or by email at *Michael.Rithmire@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

BIS established the ECCN 0Y521 series to identify items that warrant control on the CCL but are not yet identified in an existing ECCN (77 FR 22191, April 13, 2012). Items are added to the ECCN 0Y521 series by the Department of Commerce, with the concurrence of the Departments of Defense and State, upon a determination that an item should be controlled because it provides at least a significant military or intelligence advantage to the United States or because foreign policy reasons justify such control. The ECCN 0Y521 series is a temporary holding classification with a limitation that while an item is temporarily classified under ECCN 0Y521, the U.S. Government works to adopt a control through the relevant multilateral regime(s), to determine an appropriate longer-term control over the item, or that the item does not warrant control on the CCL.

Items classified under ECCN 0Y521, including the item identified in this interim final rule as an 0C521 item, remain so-classified for one year from the date a final rule identifying the item is published in the *Federal Register* amending the EAR, unless the item is re-classified under a different ECCN, under an EAR99 designation, or the 0Y521 classification is extended. During this time, the U.S. Government determines whether it is appropriate to submit a proposed control to the applicable export control regime (e.g., the Wassenaar Arrangement) for potential multilateral control, with the understanding that multilateral controls are preferable when practical. An item's ECCN 0Y521 classification may be extended for two one-year periods to provide time for the U.S. Government and multilateral regime(s) to reach agreement on controls for the item, and provided that the U.S. Government has submitted a proposal to obtain multilateral

controls over the item. Further extension beyond three years may occur only if the Under Secretary for Industry and Security makes a determination that such extension is in the national security or foreign policy interests of the United States. An extension or re-extension, including a determination by the Under Secretary for Industry and Security, will be published in the *Federal Register*.

License Requirements, Policies and Exceptions

The license requirements and policies for the ECCN 0Y521 series appear in § 742.6(a)(7) of the EAR. ECCN 0Y521 items are subject to a nearly worldwide license requirement (i.e., for every country except Canada) with a case-by-case license review policy, through regional stability (RS Column 1) controls. The description and status of ECCN 0Y521 items appear in Supplement No. 5 to part 774 of the EAR, along with any item-specific license exceptions, where applicable. Unless otherwise indicated, License Exception GOV is the only license exception available and is applicable to all ECCN 0Y521 series items, including those items identified in this document, if the item is within the scope of § 740.11(b)(2)(ii) (Exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the U.S. Government), as provided in § 740.2(a)(14).

Addition of ECCN 0C521 Item: XBS Epoxy System

In this rule, BIS amends the EAR to make the specified XBS Epoxy System subject to the EAR and impose a license requirement on the item. This item is being added to the 0Y521 series pursuant to a determination by the Department of Commerce, with the concurrence of the Departments of State and Defense, that the item should be

controlled because it provides a significant military or intelligence advantage to the United States or because foreign policy reasons justify such controls. The specified XBS Epoxy System is classified under ECCN 0C521 No. 1. The control, which appears in the table found in Supplement No. 5 to part 774 of the EAR, covers an Epoxy system designed to obfuscate critical technology components against X-ray and terahertz microscopy imaging attempts.

License Applications for the New ECCN 0C521 Item

License applications for this item may be submitted through SNAP-R in accordance with § 748.6 of the EAR. Exporters are directed to include detailed descriptions and technical specifications with the license application, and identify the item as 0C521.

Technical Amendment: Removal of No. 3 0D521 and No. 2 0E521 Items, Aircraft Wing Folding Systems, from Supplement No. 5 to Part 774

In this rule, BIS also removes references to aircraft wing folding systems “software” and related “technology” listed, prior to this rule, as entries No. 3 0D521 and No. 2 0E521, respectively, in Supplement No. 5 to part 774. The references to these items are obsolete because, in accordance with procedure established in the April 13, 2012, final rule, the U.S. Government adopted a control through the relevant multilateral regime(s), which determined an appropriate longer-term control over the item. The wing fold system “software” is now controlled by ECCN 9D001, and the “technology” is controlled by ECCN 9E003.j on the CCL. A final rule published in the *Federal Register*

May 21, 2015 (80 FR 29431), and which went into effect the same day, implemented the 2014 Wassenaar Plenary Agreements by establishing new controls on the items, rendering their 0Y521 status obsolete. BIS is not soliciting public comments on the removal provisions.

The rule is being issued in interim final form because while the government believes that it is in the national security interests of the United States to immediately implement these controls, it also wants to provide the interested public with an opportunity to comment on the new controls of the XBS Epoxy System. Comments may be submitted in accordance with the DATES and ADDRESSES sections of this rule.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule affects two approved collections: (1) the Simplified Network Application Processing + System (control number 0694-0088), which carries a burden hour estimate of 43.8 minutes, including the time necessary to submit license applications, among other things, as well as miscellaneous and other recordkeeping activities that account for 12 minutes per submission; and (2) License Exceptions and Exclusions (0694-0137). With these initial 0Y521 series items, BIS does not believe that this rule will materially increase the number of submissions under these collections.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring prior notice, the opportunity for public comment and a delay in effective date are

inapplicable because this regulation involves a military or foreign affairs function of the United States (*See* 5 U.S.C. 553(a)(1)). BIS, with the concurrence of the U.S. Departments of Defense and State, is implementing this rule because the item identified for the ECCN 0Y521 series in this rule provide a significant military or intelligence advantage to the United States. Immediate imposition of a license requirement is necessary to effect the national security and foreign policy goals of this rule. Immediate implementation will allow BIS to prevent exports of these items to users and for uses that pose a national security threat to the United States or its allies. If BIS delayed this rule to allow for prior notice and opportunity for public comment, the resulting delay in implementation would afford an opportunity for the export of these items to users and uses that pose such a national security threat, thereby undermining the purpose of the rule. In addition, if parties receive notice of the U.S. Government's intention to control these items under 0Y521 once a final rule was published, they might have an incentive to either accelerate orders of these items or attempt to have the items exported prior to the imposition of the control. In addition, prior notice and opportunity for public comment is unnecessary for the amendment to remove references to wing folding technology and software. The removal of the references updates Supplement No. 5 to part 774 and ensures that it accurately reflects the legal status of those items now classified under other ECCNs under the EAR. This amendment also serves to avoid confusing readers about the items' current status.

Further, BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3). Immediate implementation of these changes will allow BIS to prevent exports of these items to users and for uses that pose a national security threat to the

United States or its allies. If BIS delayed this rule to allow for a 30-day delay in effectiveness, the resulting delay in implementation would afford an opportunity for the export of these items to users and uses that pose such a national security threat, thereby undermining the purpose of the rule. BIS also finds good cause to waive the 30-day in effectiveness for the implementation of the amendment to remove items because the amendment will assist in clarifying the current status of the wing folding technology and software, eliminating any possible confusion. Furthermore, the amendment is not a substantive change. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared. Although notice and opportunity for comment are not required, BIS is issuing this rule as an interim final rule with a request for comments. All comments must be in writing and submitted via one or more of the methods listed under the ADDRESSES caption to this document. All comments (including any personal identifiable information) will be available for public inspection and copying. Those wishing to comment anonymously may do so by submitting their comment via regulations.gov and leaving the fields for identifying information blank.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730-774) is amended as follows:

PART 774 – [AMENDED]

1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

2. Supplement No. 5 to part 774 is revised to read as follows:

SUPPLEMENT NO. 5 TO PART 774 - ITEMS CLASSIFIED UNDER ECCNS 0A521, 0B521, 0C521, 0D521 AND 0E521

The following table lists items subject to the EAR that are not listed elsewhere in the CCL, but which the Department of Commerce, with the concurrence of the Departments of Defense and State, has identified warrant control for export or reexport because the items provide at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

Item descriptor.	Date of initial or subsequent BIS	Date when the item will be	Item-specific license exception
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<i>Note:</i> The description must match by model number or a broader descriptor that does not necessarily need to be company specific.	classification. (ID = initial date; SD = subsequent date)	designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.	eligibility.
0A521. Systems, Equipment and Components.			
[RESERVED]			
0B521. Test, Inspection and Production Equipment.			
[RESERVED]			
0C521. Materials.			
<i>No.1</i> XBS Epoxy system designed to obfuscate critical technology components against x-ray and terahertz microscopy imaging attempts	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] (ID)	November 16, 2016	License Exception GOV under § 740.11(b)(2)(ii) only.
<i>No.2</i> [RESERVED]	[RESERVED]	[RESERVED]	[RESERVED]
0D521. Software.			
[RESERVED]			
0E521. Technology.			
[RESERVED]			

Dated: November 9, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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